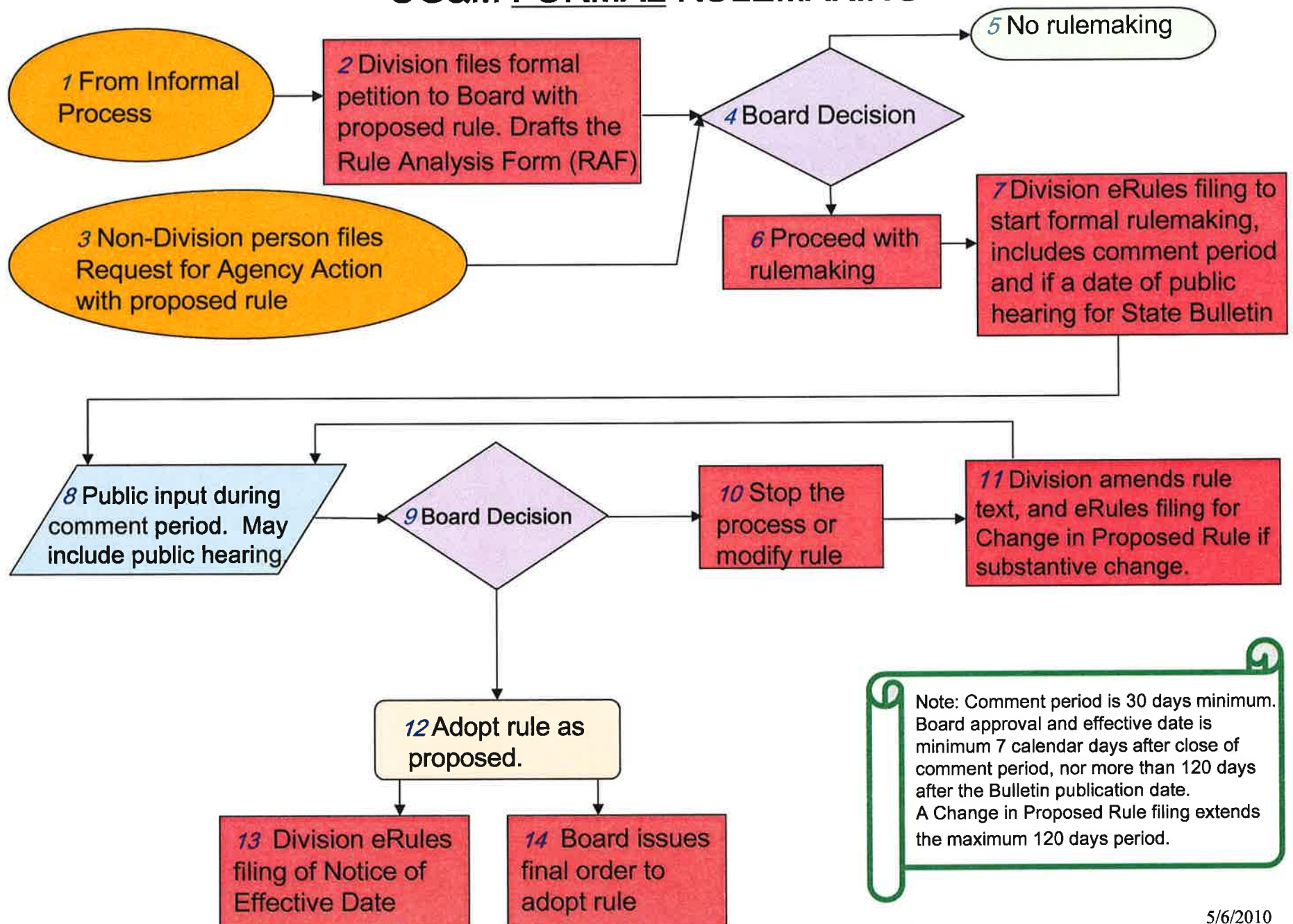


# OG&M FORMAL RULEMAKING



# Utah Administrative Rulemaking Act

Utah Code Title 63G, Chapter 3 (May 12, 2009)

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## Title 63G. General Government.

### Chapter 3. Utah Administrative Rulemaking Act.

#### Part 1. General Provisions.

##### 63G-3-101. Title.

This chapter is known as the "Utah Administrative Rulemaking Act."

*Renumbered and Amended by Chapter 382, Laws of Utah 2008 General Session, effective May 5, 2008 (formerly Section 63-46a-1)*

##### 63G-3-102. Definitions.

As used in this chapter:

(1) "Administrative record" means information an agency relies upon when making a rule under this chapter including:

- (a) the proposed rule, change in the proposed rule, and the rule analysis form;
- (b) the public comment received and recorded by the agency during the public comment period;
- (c) the agency's response to the public comment;

(d) the agency's analysis of the public comment; and

(e) the agency's report of its decision-making process.

(2) "Agency" means each state board, authority, commission, institution, department, division, officer, or other state government entity other than the Legislature, its committees, the political subdivisions of the state, or the courts, which is authorized or required by law to make rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or perform other similar actions or duties delegated by law.

(3) "Bulletin" means the Utah State Bulletin.

(4) "Catchline" means a short summary of each section, part, rule, or title of the code that follows the section, part, rule, or title reference placed before the text of the rule and serves the same function as boldface in legislation as described in Section 68-3-13.

(5) "Code" means the body of all effective rules as compiled and organized by the division and entitled "Utah Administrative Code."

(6) "Director" means the director of the Division of Administrative Rules.

(7) "Division" means the Division of Administrative Rules.

(8) "Effective" means operative and enforceable.

(9) (a) "File" means to submit a document to the division as prescribed by the division.

(b) "Filing date" means the day and time the document is recorded as received by the division.

(10) "Interested person" means any person affected by or interested in a proposed rule, amendment to an existing rule, or a nonsubstantive change made under Section 63G-3-402.

(11) "Order" means an agency action that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

(12) "Person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency.

(13) "Publication" or "publish" means making a rule available to the public by including the rule or a summary of the rule in the bulletin.

(14) "Publication date" means the inscribed date of the bulletin.

(15) "Register" may include an electronic database.

(16) (a) "Rule" means an agency's written statement that:

(i) is explicitly or implicitly required by state or federal statute or other applicable law;

(ii) implements or interprets a state or federal legal mandate; and

(iii) applies to a class of persons or another agency.

(b) "Rule" includes the amendment or repeal of an existing rule.

(c) "Rule" does not mean:

(i) orders;

(ii) an agency's written statement that applies only to internal management and that does not restrict the legal rights of a public class of persons or another agency;

(iii) the governor's executive orders or proclamations;

(iv) opinions issued by the attorney general's office;

(v) declaratory rulings issued by the agency according to Section 63G-4-503 except as required by Section 63G-3-201;

(vi) rulings by an agency in adjudicative proceedings, except as required by Subsection 63G-3-201(6); or

(vii) an agency written statement that is in violation of any state or federal law.

(17) "Rule analysis" means the format prescribed by the division to summarize and analyze rules.

(18) "Small business" means a business employing fewer than 50 persons.

(19) "Substantive change" means a change in a rule that affects the application or results of agency actions.

*Renumbered and Amended by Chapter 382, Laws of Utah 2008 General Session, effective May 5, 2008 (formerly Section 63-46a-2)*

## **Part 2. Circumstances Requiring Rulemaking - Status of Administrative Rules.**

### **63G-3-201. When rulemaking is required.**

(1) Each agency shall:

(a) maintain a current version of its rules; and

(b) make it available to the public for inspection during its regular business hours.

(2) In addition to other rulemaking required by law, each agency shall make rules when agency action:

(a) authorizes, requires, or prohibits an action;

(b) provides or prohibits a material benefit;

(c) applies to a class of persons or another agency; and

(d) is explicitly or implicitly authorized by statute.

(3) Rulemaking is also required when an agency issues a written interpretation of a state or federal legal mandate.

(4) Rulemaking is not required when:

(a) agency action applies only to internal agency management, inmates or residents of a state correctional, diagnostic, or detention facility, persons under state legal custody, patients admitted to a state hospital, members of the state retirement system, or students enrolled in a state education institution;

(b) a standardized agency manual applies only to internal fiscal or administrative details of governmental entities supervised under statute;

(c) an agency issues policy or other statements that are advisory, informative, or descriptive, and do not conform to the requirements of Subsections (2) and (3); or

(d) an agency makes nonsubstantive changes in a rule, except that the agency shall file all nonsubstantive changes in a rule with the division.

(5) (a) A rule shall enumerate any penalty authorized by statute that may result from its violation, subject to Subsections (5)(b) and (c).

(b) A violation of a rule may not be subject to the criminal penalty of a class C misdemeanor or greater offense, except as provided under Subsection (5)(c).

(c) A violation of a rule may be subject to a class C or greater criminal penalty under Subsection (5)(a) when:

(i) authorized by a specific state statute;

(ii) a state law and programs under that law are established in order for the state to obtain or maintain primacy over a federal program; or

(iii) state civil or criminal penalties established by state statute regarding the program are equivalent to or less than corresponding federal civil or criminal penalties.

(6) Each agency shall enact rules incorporating the principles of law not already in its rules that are established by final adjudicative decisions within 120 days after the decision is announced in its cases.

(7) (a) Each agency may enact a rule that incorporates by reference:

(i) all or any part of another code, rule, or regulation that has been adopted by a federal agency, an agency or political subdivision of this state, an agency of another state, or by a nationally recognized organization or association;

- (ii) state agency implementation plans mandated by the federal government for participation in the federal program;
  - (iii) lists, tables, illustrations, or similar materials that are subject to frequent change, fully described in the rule, and are available for public inspection; or
  - (iv) lists, tables, illustrations, or similar materials that the director determines are too expensive to reproduce in the administrative code.
- (b) Rules incorporating materials by reference shall:

- (i) be enacted according to the procedures outlined in this chapter;
  - (ii) state that the referenced material is incorporated by reference;
  - (iii) state the date, issue, or version of the material being incorporated; and
  - (iv) define specifically what material is incorporated by reference and identify any agency deviations from it.
- (c) The agency shall identify any substantive changes in the material incorporated by reference by following the rulemaking procedures of this chapter.
- (d) The agency shall maintain a complete and current copy of the referenced material available for public review at the agency and at the division.
- (8) (a) This chapter is not intended to inhibit the exercise of agency discretion within the limits prescribed by statute or agency rule.
- (b) An agency may enact a rule creating a justified exception to a rule.
- (9) An agency may obtain assistance from the attorney general to ensure that its rules meet legal and constitutional requirements.

*Amended by Chapter 347, Laws of Utah 2009 General Session, effective May 12, 2009 (formerly Section 63-46a-3)*

### **63G-3-202. Rules having the effect of law.**

(1) An agency's written statement is a rule if it conforms to the definition of a rule under Section 63G-3-102, but the written statement is not enforceable unless it is made as a rule in accordance with the requirements of this chapter.

(2) An agency's written statement that is made as a rule in accordance with the requirements of this chapter is enforceable and has the effect of law.

*Renumbered and Amended by Chapter 382, Laws of Utah 2008 General Session, effective May 5, 2008 (formerly Section 63-46a-3.5)*

## **Part 3. Rulemaking Procedures.**

### **63G-3-301. Rulemaking procedure.**

(1) An agency authorized to make rules is also authorized to amend or repeal those rules.

(2) Except as provided in Sections 63G-3-303 and 63G-3-304, when making, amending, or repealing a rule agencies shall comply with:

- (a) the requirements of this section;
- (b) consistent procedures required by other statutes;
- (c) applicable federal mandates; and
- (d) rules made by the division to implement this chapter.

(3) Subject to the requirements of this chapter, each agency shall develop and use flexible approaches in drafting rules that meet the needs of the agency and that involve persons affected by the agency's rules.

(4) (a) Each agency shall file its proposed rule and rule analysis with the division.

(b) Rule amendments shall be marked with new language underlined and deleted language struck out.

(c) (i) The division shall publish the information required under Subsection (8) on the rule analysis and the text of the proposed rule in the next issue of the bulletin.

(ii) For rule amendments, only the section or subsection of the rule being amended need be printed.

(iii) If the director determines that the rule is too long to publish, the director shall publish the rule analysis and shall publish the rule by reference to a copy on file with the division.

(5) Prior to filing a rule with the division, the department head shall consider and comment on the fiscal impact a rule may have on businesses.

(6) If the agency reasonably expects that a proposed rule will have a measurable negative fiscal impact on small businesses, the agency shall consider, as allowed by federal law, each of the following methods of reducing the impact of the rule on small businesses:

(a) establishing less stringent compliance or reporting requirements for small businesses;

(b) establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) consolidating or simplifying compliance or reporting requirements for small businesses;

(d) establishing performance standards for small businesses to replace design or operational standards required in the proposed rule; and

(e) exempting small businesses from all or any part of the requirements contained in the proposed rule.

(7) If during the public comment period an agency receives comment that the proposed rule will cost small business more than one day's annual average gross receipts, and the agency had not previously performed the analysis in Subsection (6), the agency shall perform the analysis described in Subsection (6).

(8) The rule analysis shall contain:

(a) a summary of the rule or change;

(b) the purpose of the rule or reason for the change;

(c) the statutory authority or federal requirement for the rule;

(d) the anticipated cost or savings to:

(i) the state budget;

(ii) local governments;

(iii) small businesses; and

(iv) persons other than small businesses, businesses, or local governmental entities;

(e) the compliance cost for affected persons;

(f) how interested persons may review the full text of the rule;

(g) how interested persons may present their views on the rule;

- (h) the time and place of any scheduled public hearing;
  - (i) the name and telephone number of an agency employee who may be contacted about the rule;
  - (j) the name of the agency head or designee who authorized the rule;
  - (k) the date on which the rule may become effective following the public comment period; and
  - (l) comments by the department head on the fiscal impact the rule may have on businesses.
- (9) (a) For a rule being repealed and reenacted, the rule analysis shall contain a summary that generally includes the following:
- (i) a summary of substantive provisions in the repealed rule which are eliminated from the enacted rule; and
  - (ii) a summary of new substantive provisions appearing only in the enacted rule.
- (b) The summary required under this Subsection (9) is to aid in review and may not be used to contest any rule on the ground of noncompliance with the procedural requirements of this chapter.
- (10) A copy of the rule analysis shall be mailed to all persons who have made timely request of the agency for advance notice of its rulemaking proceedings and to any other person who, by statutory or federal mandate or in the judgment of the agency, should also receive notice.
- (11) (a) Following the publication date, the agency shall allow at least 30 days for public comment on the rule.
- (b) The agency shall review and evaluate all public comments submitted in writing within the time period under Subsection (11)(a) or presented at public hearings conducted by the agency within the time period under Subsection (11)(a).
- (12) (a) Except as provided in Sections 63G-3-303 and 63G-3-304, a proposed rule becomes effective on any date specified by the agency that is no fewer than seven calendar days after the close of the public comment period under Subsection (11), nor more than 120 days after the publication date.
- (b) The agency shall provide notice of the rule's effective date to the division in the form required by the division.
- (c) The notice of effective date may not provide for an effective date prior to the date it is received by the division.
- (d) The division shall publish notice of the effective date of the rule in the next issue of the bulletin.
- (e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is not filed with the division within 120 days of publication.
- (13) (a) As used in this Subsection (13), "initiate rulemaking proceedings" means the filing, for the purposes of publication in accordance with Subsection (4), of an agency's proposed rule that is required by state statute.
- (b) A state agency shall initiate rulemaking proceedings no later than 180 days after the effective date of the statutory provision that specifically requires the rulemaking, except under Subsection (13)(c).
- (c) When a statute is enacted that requires agency rulemaking and the affected agency already has rules in place that meet the statutory requirement, the agency

shall submit the rules to the Administrative Rules Review Committee for review within 60 days after the statute requiring the rulemaking takes effect.

- (d) If a state agency does not initiate rulemaking proceedings in accordance with the time requirements in Subsection (13)(b), the state agency shall appear before the legislative Administrative Rules Review Committee and provide the reasons for the delay.

*Amended by Chapter 93, Laws of Utah 2009 General Session, effective May 12, 2009 (formerly Section 63-46a-4)*

### **63G-3-302. Public hearings.**

- (1) Each agency may hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule during the public comment period.
- (2) Each agency shall hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule if:
  - (a) a public hearing is required by state or federal mandate;
  - (b) (i) another state agency, ten interested persons, or an interested association having not fewer than ten members request a public hearing; and
  - (ii) the agency receives the request in writing not more than 15 days after the publication date of the proposed rule.
- (3) The agency shall hold the hearing:
  - (a) before the rule becomes effective; and
  - (b) no less than seven days nor more than 30 days after receipt of the request for hearing.

*Renumbered and Amended by Chapter 382, Laws of Utah 2008 General Session, effective May 5, 2008 (formerly Section 63-46a-5)*

### **63G-3-303. Changes in rules.**

- (1) (a) To change a proposed rule already published in the bulletin, an agency shall file with the division:
  - (i) the text of the changed rule; and
  - (ii) a rule analysis containing a description of the change and the information required by Section 63G-3-301.
- (b) A change to a proposed rule may not be filed more than 120 days after publication of the rule being changed.
- (c) The division shall publish the rule analysis for the changed rule in the bulletin.
- (d) The changed proposed rule and its associated proposed rule will become effective on a date specified by the agency, not less than 30 days or more than 120 days after publication of the last change in proposed rule.
- (e) A changed proposed rule and its associated proposed rule lapse if a notice of effective date or another change to a proposed rule is not filed with the division within 120 days of publication of the last change in proposed rule.
- (2) If the rule change is nonsubstantive:
  - (a) the agency need not comply with the requirements of Subsection (1); and
  - (b) the agency shall notify the division of the change in writing.
- (3) If the rule is effective, the agency shall amend the rule according to the procedures specified in Section 63G-3-301.

*Renumbered and Amended by Chapter 382, Laws of Utah 2008 General Session, effective May 5, 2008 (formerly Section 63-46a-6)*

**63G-3-304. Emergency rulemaking procedure.**

(1) All agencies shall comply with the rulemaking procedures of Section 63G-3-301 unless an agency finds that these procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law.

(2) (a) When finding that its rule is excepted from regular rulemaking procedures by this section, the agency shall file with the division:

- (i) the text of the rule; and
  - (ii) a rule analysis that includes the specific reasons and justifications for its findings.
- (b) The division shall publish the rule in the bulletin as provided in Subsection 63G-3-301(4).
- (c) The agency shall notify interested persons as provided in Subsection 63G-3-301(10).

(d) The rule becomes effective for a period not exceeding 120 days on the date of filing or any later date designated in the rule.

(3) If the agency intends the rule to be effective beyond 120 days, the agency shall also comply with the procedures of Section 63G-3-301.

*Amended by Chapter 300, Laws of Utah 2008 General Session; and Renumbered and Amended by Chapter 382, Laws of Utah 2008 General Session, effective May 5, 2008 (formerly Section 63-46a-7)*

**63G-3-305. Agency review of rules -- Schedule of filings -- Limited exemption for certain rules.**

(1) Each agency shall review each of its rules within five years of the rule's original effective date or within five years of the filing of the last five-year review, whichever is later. Rules effective prior to 1992 need not be reviewed until 1997.

(2) An agency may consider any substantial review of a rule to be a five-year review. If the agency chooses to consider a review a five-year review, it shall follow the procedures outlined in Subsection (3).

(3) At the conclusion of its review, the agency shall file a notice of review on or before the anniversary date indicating its intent to continue, amend, or repeal the rule.

(a) If the agency continues the rule, it shall file a statement which includes:

- (i) a concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule;
- (ii) a summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule; and
- (iii) a reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any.

(b) If the agency repeals the rule, it shall comply with Section 63G-3-301.

(c) If the agency amends and continues the rule, it shall comply with the requirements of Section 63G-3-301 and file the statement required in Subsection (3)(a).

(4) (a) The division shall publish the notice and statement in the bulletin.

(b) The division may schedule the publication of agency notices and statements, provided that no notice and statement shall be published more than one year after the review deadline established under Subsection (1).

(5) The division shall notify an agency of rules due for review at least 180 days prior to the anniversary date.

(6) If an agency finds that it will not meet the deadline established in Subsection (1):

(a) the agency may file an extension prior to the anniversary date with the division indicating the reason for the extension; and

(b) the division shall publish notice of the extension in the next issue of the bulletin.

(7) An extension permits the agency to file a notice no more than 120 days after the anniversary date.

(8) If an agency fails to file a notice of review or extension on or before the date specified in the notice mandated in Subsection (5), the division shall:

(a) publish a notice in the next issue of the bulletin that the rule has expired and is no longer enforceable;

(b) remove the rule from the code; and

(c) notify the agency that the rule has expired.

(9) After a rule expires, an agency must comply with the requirements of Section 63G-3-301 to reenact the rule.

(10) (a) Rules issued under the following provisions related to the Department of Workforce Services or Labor Commission that are in effect on July 1, 1997, are not subject to the requirements of this section until July 1, 1998:

- (i) Title 34, Labor in General;
- (ii) Title 34A, Utah Labor Code;
- (iii) Title 35A, Utah Workforce Services

Code;

(iv) Title 40, Chapter 2, Coal Mines; and

(v) Title 57, Chapter 21, Utah Fair Housing

Act.

(b) Any rule described in Subsection (10)(a) that would have expired on or after July 1, 1997 but before July 1, 1998, expires July 1, 1998, unless for that rule the Department of Workforce Services or Labor Commission files:

(i) the notice of review, described in Subsection (3); or

(ii) an extension described in Subsection (6).

*Renumbered and Amended by Chapter 382, Laws of Utah 2008 General Session, effective May 5, 2008 (formerly Section 63-46a-9)*

**Part 4. Division of Administrative Rules.**

**63G-3-401. Division of Administrative Rules created -- Appointment of director.**

(1) There is created within the Department of Administrative Services the Division of Administrative Rules, to be administered by a director.



(2) The director of administrative rules shall be appointed by the executive director with the approval of the governor.

*Renumbered and Amended by Chapter 382, Laws of Utah 2008  
General Session, effective May 5, 2008 (formerly Section 63-46a-9.5)*

**63G-3-402. Division of Administrative Rules – Duties generally.**

(1) The Division of Administrative Rules shall:

- (a) establish all filing, publication, and hearing procedures necessary to make rules under this chapter;
  - (b) record in a register the receipt of all agency rules, rule analysis forms, and notices of effective dates;
  - (c) make the register, copies of all proposed rules, and rulemaking documents available for public inspection;
  - (d) publish all proposed rules, rule analyses, notices of effective dates, and review notices in the bulletin at least monthly, except that the division may publish the complete text of any proposed rule that the director determines is too long to print or too expensive to publish by reference to the text maintained by the division;
  - (e) compile, format, number, and index all effective rules in an administrative code, and periodically publish that code and supplements or revisions to it;
  - (f) publish a digest of all rules and notices contained in the most recent bulletin;
  - (g) publish at least annually an index of all changes to the administrative code and the effective date of each change;
  - (h) print, or contract to print, all rulemaking publications the division determines necessary to implement this chapter;
  - (i) distribute without charge the bulletin and administrative code to state-designated repositories, the Administrative Rules Review Committee, the Office of Legislative Research and General Counsel, and the two houses of the Legislature;
  - (j) distribute without charge the digest and index to state legislators, agencies, political subdivisions on request, and the Office of Legislative Research and General Counsel;
  - (k) distribute, at prices covering publication costs, all paper rulemaking publications to all other requesting persons and agencies;
  - (l) provide agencies assistance in rulemaking; and
  - (m) administer this chapter and require state agencies to comply with filing, publication, and hearing procedures.
- (2) The division may after notifying the agency make nonsubstantive changes to rules filed with the division or published in the bulletin or code by:
- (a) implementing a uniform system of formatting, punctuation, capitalization, organization, numbering, and wording;
  - (b) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;
  - (c) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;

(d) updating or correcting annotations associated with a section, part, rule, or title; and

(e) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.

(3) In addition, the division may make the following nonsubstantive changes with the concurrence of the agency:

- (a) eliminate duplication within rules;
- (b) eliminate obsolete and redundant words; and
- (c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules.

(4) For nonsubstantive changes made in accordance with Subsection (2) or (3) after publication of the rule in the bulletin, the division shall publish a list of nonsubstantive changes in the bulletin. For each nonsubstantive change, the list shall include:

- (a) the affected code citation;
- (b) a brief description of the change; and
- (c) the date the change was made.

(5) All funds appropriated or collected for publishing the division's publications shall be nonlapsing.

*Renumbered and Amended by Chapter 382, Laws of Utah 2008  
General Session, effective May 5, 2008 (formerly Section 63-46a-10)*

**63G-3-403. Repeal and reenactment of Utah Administrative Code.**

(1) When the director determines that the Utah Administrative Code requires extensive revision and reorganization, the division may repeal the code and reenact a new code according to the requirements of this section.

(2) The division may:

- (a) reorganize, reformat, and renumber the code;
- (b) require each agency to review its rules and make any organizational or substantive changes according to the requirements of Section 63G-3-303; and
- (c) require each agency to prepare a brief summary of all substantive changes made by the agency.

(3) The division may make nonsubstantive changes in the code by:

- (a) adopting a uniform system of punctuation, capitalization, numbering, and wording;
- (b) eliminating duplication;
- (c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules;
- (d) eliminating all obsolete or redundant words;
- (e) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;
- (f) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;
- (g) updating or correcting annotations associated with a section, part, rule, or title; and
- (h) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.

(4) (a) To inform the public about the proposed code reenactment, the division shall publish in the bulletin:

- (i) notice of the code reenactment;

- (ii) the date, time, and place of a public hearing where members of the public may comment on the proposed reenactment of the code;
- (iii) locations where the proposed reenactment of the code may be reviewed; and
- (iv) agency summaries of substantive changes in the reenacted code.
- (b) To inform the public about substantive changes in agency rules contained in the proposed reenactment, each agency shall:
  - (i) make the text of their reenacted rules available:
    - (A) for public review during regular business hours; and
    - (B) in an electronic version; and
  - (ii) comply with the requirements of Subsection 63G-3-301(10).
- (5) The division shall hold a public hearing on the proposed code reenactment no fewer than 30 days nor more than 45 days after the publication required by Subsection (4)(a).
- (6) The division shall distribute complete text of the proposed code reenactment without charge to:
  - (a) state-designated repositories in Utah;
  - (b) the Administrative Rules Review Committee; and
  - (c) the Office of Legislative Research and General Counsel.
- (7) The former code is repealed and the reenacted code is effective at noon on a date designated by the division that is not fewer than 45 days nor more than 90 days after the publication date required by this section.
- (8) Repeal and reenactment of the code meets the requirements of Section 63G-3-305 for a review of all agency rules.

*Amended by Chapter 300, Laws of Utah 2008 General Session; and Renumbered and Amended by Chapter 382, Laws of Utah 2008 General Session, effective May 5, 2008 (formerly Section 63-46a-10.5)*

## Part 5. Legislative Oversight.

### 63G-3-501. Administrative Rules Review Committee.

(1) (a) There is created an Administrative Rules Review Committee of ten permanent members and four ex officio members.

- (b) (i) The committee's permanent members shall be composed of five members of the Senate, appointed by the president of the Senate, and five members of the House, appointed by the speaker of the House, with no more than three senators and three representatives from the same political party.
- (ii) The permanent members shall convene at least once each month as a committee to review new agency rules, amendments to existing agency rules, and repeals of existing agency rules. Meetings may be suspended at the discretion of the committee chairs.
- (iii) Members shall serve for two-year terms or until their successors are appointed.
- (iv) A vacancy exists whenever a committee member ceases to be a member of the Legislature, or when a member resigns from the committee.

Vacancies shall be filled by the appointing authority, and the replacement shall serve out the unexpired term.

(c) When the committee reviews existing rules, the committee's permanent members shall invite the Senate and House chairmen of the standing committee and the Senate and House chairmen of the appropriation subcommittee that have jurisdiction over the agency whose existing rules are being reviewed to participate as nonvoting, ex officio members with the committee.

(d) Three representatives and three senators from the permanent members are a quorum for the transaction of business at any meeting.

(2) Each agency rule as defined in Section 63G-3-102 shall be submitted to the committee at the same time public notice is given under Section 63G-3-301.

(3) (a) The committee shall exercise continuous oversight of the process of rulemaking.

(b) The committee shall examine rules submitted by each agency to determine:

- (i) whether or not they are authorized by statute;
- (ii) whether or not they comply with legislative intent;
- (iii) their impact on the economy and the government operations of the state and local political subdivisions; and
- (iv) their impact on affected persons.

(c) To carry out these duties, the committee may examine any other issues that it considers necessary. The committee may also notify and refer rules to the chairmen of the interim committee which has jurisdiction over a particular agency when the committee determines that an issue involved in an agency's rules may be more appropriately addressed by that committee.

(d) In reviewing the rules, the committee shall follow generally accepted principles of statutory construction.

(4) The committee may request that the Office of the Legislative Fiscal Analyst prepare a fiscal note on any rule.

(5) In order to accomplish its oversight functions, the committee has all the powers granted to legislative interim committees as set forth in Section 36-12-11.

(6) (a) The committee may prepare written findings of its review of each rule and may include any recommendations, including legislative action.

(b) The committee shall provide to the agency that enacted the rule:

- (i) its findings, if any; and
- (ii) a request that the agency notify the committee of any changes it makes in the rule.

(c) The committee shall provide its findings to any member of the Legislature and to any person affected by the rule who requests the findings.

(d) The committee shall provide its findings to the presiding officers of both the House and the Senate, Senate and House chairs of the standing committee, and the Senate and House chairs of the Appropriation Subcommittee that have jurisdiction over the agency whose rules are the subject of the findings.



(7) (a) The committee may submit a report on its review of state agency rules to each member of the Legislature at each regular session.

(b) The report shall include:

- (i) the findings and recommendations made by the committee under Subsection (6);
- (ii) any action taken by an agency in response to committee recommendations; and
- (iii) any recommendations by the committee for legislation.

*Renumbered and Amended by Chapter 382, Laws of Utah 2008 General Session, effective May 5, 2008 (formerly Section 63-46a-11)*

**63G-3-502. Legislative reauthorization of agency rules -- Extension of rules by governor.**

(1) All grants of rulemaking power from the Legislature to a state agency in any statute are made subject to the provisions of this section.

(2) (a) Except as provided in Subsection (2)(b), every agency rule that is in effect on February 28 of any calendar year expires on May 1 of that year unless it has been reauthorized by the Legislature.

(b) Notwithstanding the provisions of Subsection

(2)(a), an agency's rules do not expire if:

- (i) the rule is explicitly mandated by a federal law or regulation; or
- (ii) a provision of Utah's constitution vests the agency with specific constitutional authority to regulate.

(3) (a) The Administrative Rules Review Committee shall have omnibus legislation prepared for consideration by the Legislature during its annual general session.

(b) The omnibus legislation shall be substantially in the following form: "All rules of Utah state agencies are reauthorized except for the following:".

(c) Before sending the legislation to the governor for the governor's action, the Administrative Rules Review Committee may send a letter to the governor and to the agency explaining specifically why the committee believes any rule should not be reauthorized.

(d) For the purpose of this section, the entire rule, a single section, or any complete paragraph of a rule may be excepted for reauthorization in the omnibus legislation considered by the Legislature.

(4) The Legislature's reauthorization of a rule by legislation does not constitute legislative approval of the rule, nor is it admissible in any proceeding as evidence of legislative intent.

(5) (a) If an agency believes that a rule that has not been reauthorized by the Legislature or that will be allowed to expire should continue in full force and effect and is a rule within their authorized rulemaking power, the agency may seek the governor's declaration extending the rule beyond the expiration date.

(b) In seeking the extension, the agency shall submit a petition to the governor that affirmatively states:

- (i) that the rule is necessary; and
  - (ii) a citation to the source of its authority to make the rule.
- (c) (i) If the governor finds that the necessity does exist, and that the agency has the authority to make the

rule, the governor may declare the rule to be extended by publishing that declaration in the Administrative Rules Bulletin on or before April 15 of that year.

(ii) The declaration shall set forth the rule to be extended, the reasons the extension is necessary, and a citation to the source of the agency's authority to make the rule.

(d) If the omnibus bill required by Subsection (3) fails to pass both houses of the Legislature or is found to have a technical legal defect preventing reauthorization of administrative rules intended to be reauthorized by the Legislature, the governor may declare all rules to be extended by publishing a single declaration in the Administrative Rules Bulletin on or before June 15 without meeting requirements of Subsections (5)(b) and (c).

*Renumbered and Amended by Chapter 382, Laws of Utah 2008 General Session, effective May 5, 2008 (formerly Section 63-46a-11.5)*

**Part 6. Judicial Review.**

**63G-3-601. Interested parties -- Petition for agency action.**

(1) As used in this section, "initiate rulemaking proceedings" means the filing, for the purposes of publication in accordance with Subsection 63G-3-301(4), of an agency's proposed rule to implement a petition for the making, amendment, or repeal of a rule as provided in this section.

(2) An interested person may petition an agency to request the making, amendment, or repeal of a rule.

(3) The division shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition.

(4) A statement shall accompany the proposed rule, or proposed amendment or repeal of a rule, demonstrating that the proposed action is within the jurisdiction of the agency and appropriate to the powers of the agency.

(5) Within 60 days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rulemaking proceedings.

(6) (a) If the petition is submitted to a board that has been granted rulemaking authority by the Legislature, the board shall, within 45 days of the submission of the petition, place the petition on its agenda for review.

(b) Within 80 days of the submission of the petition, the board shall either:

- (i) deny the petition in writing stating its reasons for denial; or
- (ii) initiate rulemaking proceedings.

(7) If the agency or board has not provided the petitioner written notice that the agency has denied the petition or initiated rulemaking proceedings within the time limitations specified in Subsection (5) or (6) respectively, the petitioner may seek a writ of mandamus in state district court.

*Renumbered and Amended by Chapter 382, Laws of Utah 2008 General Session, effective May 5, 2008 (formerly Section 63-46a-12)*

**63G-3-602. Judicial challenge to administrative rules.**

(1) (a) Any person aggrieved by a rule may obtain judicial review of the rule by filing a complaint with the county clerk in the district court where the person resides or in the district court in Salt Lake County.

(b) Any person aggrieved by an agency's failure to comply with Section 63G-3-201 may obtain judicial review of the agency's failure to comply by filing a complaint with the clerk of the district court where the person resides or in the district court in Salt Lake County.

(2) (a) Except as provided in Subsection (2)(b), a person seeking judicial review under this section shall exhaust that person's administrative remedies by complying with the requirements of Section 63G-3-601 before filing the complaint.

(b) When seeking judicial review of a rule, the person need not exhaust that person's administrative remedies if:

(i) less than six months has passed since the date that the rule became effective and the person had submitted verbal or written comments on the rule to the agency during the public comment period;

(ii) a statute granting rulemaking authority expressly exempts rules made under authority of that statute from compliance with Section 63G-3-601; or

(iii) compliance with Section 63G-3-601 would cause the person irreparable harm.

(3) (a) In addition to the information required by the Utah Rules of Civil Procedure, a complaint filed under this section shall contain:

(i) the name and mailing address of the plaintiff;

(ii) the name and mailing address of the defendant agency;

(iii) the name and mailing address of any other party joined in the action as a defendant;

(iv) the text of the rule or proposed rule, if any;

(v) an allegation that the person filing the complaint has either exhausted the administrative remedies by complying with Section 63G-3-601 or met the requirements for waiver of exhaustion of administrative remedies established by Subsection (2)(b);

(vi) the relief sought; and

(vii) factual and legal allegations supporting the relief sought.

(b) (i) The plaintiff shall serve a summons and a copy of the complaint as required by the Utah Rules of Civil Procedure.

(ii) The defendants shall file a responsive pleading as required by the Utah Rules of Civil Procedures.

(iii) The agency shall file the administrative record of the rule, if any, with its responsive pleading.

(4) The district court may grant relief to the petitioner by:

(a) declaring the rule invalid, if the court finds that:

(i) the rule violates constitutional or statutory law or the agency does not have legal authority to make the rule;

(ii) the rule is not supported by substantial evidence when viewed in light of the whole administrative record; or

(iii) the agency did not follow proper rulemaking procedure;

(b) declaring the rule nonapplicable to the petitioner;

(c) remanding the matter to the agency for compliance with proper rulemaking procedures or further fact-finding;

(d) ordering the agency to comply with Section 63G-3-201;

(e) issuing a judicial stay or injunction to enjoin the agency from illegal action or action that would cause irreparable harm to the petitioner; or

(f) any combination of Subsections (4)(a) through (e).

(5) If the plaintiff meets the requirements of Subsection (2)(b), the district court may review and act on a complaint under this section whether or not the plaintiff has requested the agency review under Section 63G-3-601.

*Renumbered and Amended by Chapter 382, Laws of Utah 2008 General Session, effective May 5, 2008 (formerly Section 63-46a-12.1)*

### **63G-3-603. Time for contesting a rule -- Statute of limitations.**

(1) A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this chapter shall commence within two years of the effective date of the rule.

(2) A proceeding to contest any rule on the ground of not being supported by substantial evidence when viewed in light of the whole administrative record shall commence within four years of the effective date of the challenged action.

(3) A proceeding to contest any rule on the basis that a change to the rule made under Subsection 63G-3-402(2) or (3) substantively changed the rule shall be commenced within two years of the date the change was made.

*Renumbered and Amended by Chapter 382, Laws of Utah 2008 General Session, effective May 5, 2008 (formerly Section 63-46a-14)*

## **Part 7. Official Compilation of Administrative Rules.**

### **63G-3-701. Utah Administrative Code as official compilation of rules -- Judicial notice.**

The code shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the administrative law of the state of Utah and as an authorized compilation of the administrative law of Utah. All courts shall take judicial notice of the code and its provisions.

*Renumbered and Amended by Chapter 382, Laws of Utah 2008 General Session, effective May 5, 2008 (formerly Section 63-46a-16)*

### **63G-3-702. Utah Administrative Code -- Organization -- Official compilation.**

(1) The Utah Administrative Code shall be divided into three parts:

(a) titles, whose number shall begin with "R";

(b) rules; and

(c) sections.

(2) All sections contained in the code are referenced by a three-part number indicating its location in the code.

(3) The division shall maintain the official compilation of the code and is the state-designated repository for administrative rules. If a dispute arises in which there is more than one version of a rule, the latest effective version on file with the division is considered the correct, current version.

*Renumbered and Amended by Chapter 382, Laws of Utah 2008  
General Session, effective May 5, 2008 (formerly Section 63-46a-9.6)*

*NOTE: Source <http://le.utah.gov/~code/TITLE63G/63G03.zip>  
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HistoryInfo.txt provided by Legislative Research and General  
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